62011CJ0224
JUDGMENT OF THE COURT (Sixth Chamber)

17 January 2013 (*1)

?VAT — Leasing services supplied together with insurance for the leased item, subscribed to by the lessor and invoiced by the latter to the lessee — Classification — Single complex service or two distinct services — Exemption — Insurance transaction’

In Case C-224/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny S?d Administracyjny (Poland), made by decision of 7 April 2011, received at the Court on 13 May 2011, in the proceedings

BG? Leasing sp. z o.o.

v

Dyrektor Izby Skarbowej w Warszawie,

THE COURT (Sixth Chamber),

composed of A. Rosas (Rapporteur), acting as President of the Sixth Chamber, U. Lõhmus and A. Arabadjiev, Judges,

Advocate General: V. Trstenjak,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 19 September 2012,

after considering the observations submitted on behalf of:

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BG? Leasing sp. z o.o., by T. Rolewicz and M. Chomiuk, doradcy podatkowi,

—

Dyrektor Izby Skarbowej w Warszawie, by O. D?browski, T. Tratkiewicz and J. Kaute, acting as Agents,

—

the Polish Government, by M. Szpunar, A. Krai?ska and A. Kramarczyk, acting as Agents,

—

the European Commission, by K. Herrmann and C. Soulay, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1

This request for a preliminary ruling concerns the interpretation of Article 151(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1. ‘the VAT Directive’).

2

The request has been made in proceedings between B.G.?. Leasing sp. z o.o. (‘B.G.?. Leasing’) and Dyrektor Izby Skarbowej w Warszawie (Director of the Warsaw Tax Chamber) concerning the refusal by the latter to exempt from value added tax (‘VAT’) the transaction consisting in providing insurance cover for a property which is the subject of a lease, where it accompanies the leasing service which is itself subject to VAT.

Legal context

European Union law

3

The second subparagraph of Article 1(2) provides:

‘On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.’

4

According to Article 2 of that directive:

‘1. The following transactions shall be subject to VAT:

…

(c)

the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…’

5

Article 24 of that directive provides:

‘1. Supply of services’ shall mean any transaction which does not constitute a supply of goods.

…’

6

Article 28 of the directive provides:

‘Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.’

7

Article 73 of the VAT Directive provides that in respect of the supply of goods or services, other than as referred to in Articles 74 to 77 thereof, the taxable amount is to include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

8

According to Article 78 of that directive:

‘The taxable amount shall include the following factors:

…

(b)

incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.

For the purposes of point (b) of the first paragraph, Member States may regard expenses covered by a separate agreement as incidental expenses.’

9

Article 135 of the directive provides:

‘1. Member States shall exempt the following transactions:

(a)

insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

…’

10

Article 401 of the directive states:

‘Without prejudice to other provisions of Community law, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties or, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided that the collecting of those taxes, duties or charges does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.’

Polish legislation

11

Article 5(1) of the Law on tax on goods and services (ustawa o podatku od towar?w i us?ug) of 11 March 2004 (Dz. U. No 54, item 535) (‘the Law on VAT’), provides:

‘The taxable amount for the purpose of the tax on goods and services (‘the tax’) is constituted by:

(1)

the supply of goods and services for consideration within the territory of the country;

...’

12

Article 29(1) of that Law states that:

‘The taxable amount is made up of the turnover, subject to paragraphs 2 to 21, Articles 30 to 32, Article 119 and Article 120(4) and (5). The turnover corresponds to the amount due by virtue of sales, minus the amount of tax due. The amount due is to cover the whole payment due from the purchaser. Turnover is to be increased by any received grants, subsidies and other additional payments of a similar character having a direct effect on the price (amount due) of the goods or services supplied by the taxable person, minus the amount of tax due.’

13

Under Article 30(3) of the Law on VAT:

‘Where a taxable person, acting in his own name but on behalf of another person, takes part in a supply of services, the taxable amount for the purposes of VAT is to be the amount due by virtue of the supply of services, minus the amount of tax’.

14

According to Article 43(1) of that law:

‘The following transactions shall be exempt from tax:

(1)

the services listed in Annex No 4 of this Law;

…’

15

Point 3 of Annex 4 to the Law on VAT provides:

‘Item 4 – financial intermediation services: … insurance consultancy services and valuation for insurance providers, other than services supplied by insurance companies (PKWiU ex. 67.20.10-00.20, -00.30), other than services supplied by insurance companies within the meaning of the legal provisions on insurance activities and services supplied in that respect by persons acting in

the name and on behalf of an insurance company’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

16

B.G.?. Leasing is a leasing company.

17

According to the general conditions applicable to contracts concluded between B.G.?. Leasing and its clients, the items leased by the lessor remain its property throughout the duration of the lease. The lessee pays a rent to the lessor and also pays others expenses and charges related to the item leased. Furthermore, and in accordance with the general conditions, in particular, if the item is damaged, the loss and the diminution in value of the goods which are the subject of the lease, to the exclusion of that due to normal wear and tear.

18

B.G.?. Leasing requires that the items it leases are insured.

19

For that purpose, B.G.?. Leasing offers to provide its client with insurance. If they wish to take up that offer, B.G.?. Leasing subscribes to the corresponding insurance with an insurer and re-invoices the cost of that insurance.

20

In its VAT return for February 2008, B.G.?. Leasing took the view that such re-invoicing of the cost of the insurance for the leased item was exempt from VAT.

21

The Naczelnik Drugiego Mazowieckiego Urz?du Skarbowego w Warszawie (Director of Second Mazovian Tax Office in Warsaw) took the view however that the transaction consisting in the supply of insurance cover was a supply of services ancillary to the leasing service, and that, on that basis, that transaction was subject to VAT at a rate of 22% in the same way as the principal service, namely the leasing transaction.

22

That view was upheld by the Dyrektor Izby Skarbowej w Warszawie. The latter also questioned whether B.G.?. Leasing was able to re-invoice lessees for insurance services related to leasing contracts under the same conditions as those offered by the insurer.

23

B.G.?. Leasing brought an appeal against the decision of the Dyrektor Izby skarbowej w Warszawie before the Wojew?dzki S?d Administracyjny w Warszawie (Regional Administrative Court, Warsaw). That court held that, in accordance with Article 78 of the VAT Directive, the taxable amount of a supply of services also included incidental costs, such as insurance costs charged by the supplier to the customer. That court stated that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. In that connection, that court held that, where a leasing service is

supplied together with insurance for the leased item, it is a single supply of services constituted by the leasing and insurance services. According to that court, the taxable amount of such a supply of service also includes, in addition to the rents from leasing, the insurance costs and, therefore, a single rate of VAT must be applied to all the elements comprising such a service, that is the rate applicable to the supply of the principal service which is the leasing.

24

B.G.?. Leasing brought an appeal on point of law against that judgment before the Naczelny S?d Administracyjny (Supreme Administrative Court) claiming that the Wojew?dzki S?d Administracyjny w Warszawie had incorrectly interpreted, in particular, Articles 2(1)(c), 24(1), 28, 73 and 78(b) of the VAT Directive.

25

In those circumstances, the Naczelny S?d Administracyjny decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

(1)

Must Article 2(1)(c) of [the VAT] Directive be interpreted as meaning that the service providing insurance for a leased item and the leasing service are to be treated as separate services or as one single, comprehensive, composite leasing service?

(2)

If the answer to the first question is that the service providing insurance for a leased item and the leasing service are to be treated as separate services, must Article 135(1)(a) of Directive 2006/112, in conjunction with Article 28 thereof, be interpreted as meaning that the service providing insurance for a leased item is to be exempt in the case where the lessor insures that item and charges the costs of that insurance to the lessee?

Consideration of the questions referred

Preliminary observations

26

It must be observed, first of all, that the two questions referred to the Court concern different aspects of the facts at issue in the main proceedings.

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Thus, the first question concerns whether all the transactions at issue, consisting in leasing and insurance services, constitute, for VAT purposes, a single supply of services. On the other hand, the second question, based on the assumption that there are two distinct services, concerns essentially the re-invoicing of the insurance costs and, in particular, whether such a transaction may be exempt from VAT under Article 135(1)(a) of the VAT Directive.

The first question

28

By its first question, the referring court asks essentially whether, in circumstances such as those at issue in the main proceedings, the supply of leasing services and of insurance for the leased item

are, for VAT purposes, a single supply to which a single rate of VAT must be applied, or whether they are independent transactions which must, therefore, be assessed separately as regards whether they are subject to VAT.

29

It must be recalled that, for VAT purposes every supply must normally be regarded as distinct and independent, as follows from the second subparagraph of Article 1(2) of the VAT Directive (Case C-392/11 Field Fisher Waterhouse [2012] ECR, paragraph 14 and the case-law cited).

30

Nevertheless, it is clear from the case-law of the Court that, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise in turn to taxation or exemption, must be considered to be a single transaction when they are not independent (see Case C-425/06 Part Service [2008] ECR I-897, paragraph 51, Case C-276/09 Everything Everywhere [2010] ECR I-12359, paragraph 23). There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (Case C-41/04 Levob Verzekeringen and OV Bank [2005] ECR I-9433 paragraph 22, and Case C-111/05 Aktiebolaget NN [2007] ECR I-2697, paragraph 23). Such is the case where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service (Case C-349/96 CPP [1999] ECR I-973, paragraph 30, and Part Service, paragraph 52).

31

Thus, the Court has held not only that every supply of a service must normally be regarded as distinct and independent, but that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system (see, to that effect, CPP, paragraph 29, and Case C-242/08 Swiss Re Germany Holding [2009] ECR I-10099, paragraph 51).

32

In order to determine whether the services supplied constitute independent services or a single service, it is necessary to examine the characteristic elements of the transaction concerned (see, to that effect, CPP, paragraph 29, Levob Verzekeringen and OV Bank, paragraph 20, and Field Fisher Waterhouse, paragraph 18). However, it must be recalled that there is no absolute rule for determining the extent of a service for VAT purposes, and there, in order to determine the extent of a supply of a service and, therefore, in order to determine the extent, all the circumstances in which the transaction concerned takes place must be taken into account (see, to that effect, CPP, paragraphs 27 and 28).

33

In the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether that is the situation in a particular case and to make all definitive findings of fact in that regard (see, to that effect, CPP, paragraph 32, Part Service, paragraph 54; Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09 Bog and Others [2011] ECR I-1457, paragraph 55; and the order of 19 January 2012 in Case C-117/11 Purple Parking and Airparks Services, paragraph 32). However, it is for the Court to provide the national courts with all the guidance as to the interpretation of European Union law which may be of assistance in adjudicating on the case

pending before them (Levob Verzekeringen and OV Bank, paragraph 23).

34

In that connection, it must be recalled that the transaction at issue in the main proceedings, as is clear from the file submitted to the Court, is characterised in particular by the presence of two elements, namely:

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a leasing service agreed between the parties to the lease, the lessor and the lessee, and

—

a supply of insurance for the leased item under which the lessor, the owner of the item, took out insurance with an insurer, the cost of which is re-invoiced, for the same amount to the lessee.

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In order to determine whether such elements constitute a single transaction for VAT purposes, it must be observed, first of all, that it is true that those two elements are likely to be supplied together. In fact, there is a link between the supply of a leasing service and the supply of insurance for the leased item, since such insurance for that item is only of use with respect to the latter.

36

It must be stated, in that regard, that any insurance transaction has, by nature, a link with the item it covers. It follows that there is necessarily a connection between the leased item and the relevant insurance. Nonetheless, such a connection is not sufficient in itself to determine whether or not there is a single complex transaction for VAT purposes. If any insurance transaction were subject to VAT because the services relating to the item it covers were subject to VAT, the very aim of Article 135(1)(a) of the VAT Directive, that is the exemption of insurance transactions would be called into question.

37

Next, it must be recalled that, according to the case-law of the Court, since leasing services do not provide for a transfer to the lessee of ownership in the leased item, they must be categorised, in principle, as a supply of services (see, to that effect, Case C-118/11 Eon Aset Menidjmunt [2012] ECR, paragraph 33). It is also clear from that case-law that such services may nevertheless be treated as the acquisition of capital goods in certain circumstances. Such is the case in particular where the lessee possesses all the essential powers attaching to ownership of the item which is the subject of the leasing agreement, in particular, if substantially all the rewards and risks incidental to legal ownership of that vehicle are transferred to the lessee and that the present value of the amount of the lease payments is practically identical to the market value of the property (see, Eon Aset Menidjmunt, paragraph 40). It is for the referring court to determine, in the light of the circumstances of the case, whether those criteria are fulfilled.

38

As supplies of services, such leasing transactions are, as a general rule, subject to VAT under Article 2(1)(c) of the VAT Directive, and for which the taxable amount is determined in accordance with Article 73 thereof (see, to that effect, Part Service, paragraph 61). However, as regards the supply of services, they must normally be exempt from VAT under Article 135(1)(a) of the VAT

Directive.

39

Under the rule set out in paragraph 29 of this judgment, according to which each supply must normally be regarded as separate and independent, it must be observed that, as a general rule, a leasing service and the supply of insurance for the leased item cannot be regarded as being so closely linked that they form a single transaction. The fact of assessing such supplies separately cannot constitute in itself an artificial splitting of a single financial transaction, capable of distorting the functioning of the VAT system.

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That being the case, it is appropriate to examine whether there are reasons arising from the facts at issue in the main proceedings which would suggest that the elements concerned constitute a single transaction.

41

From that perspective, it must be recalled first of all that, according to the case-law of the Court on the definition of a single transaction, as set out in paragraph 30 of this judgment, a service is regarded as ancillary to a principal service in particular where it does not constitute for the customers an aim in itself, but a means of better enjoying the principal service supplied (CPP, paragraph 30, and Part Service, paragraph 52).

42

In that connection, although it is true that as a result of the insurance for the leased item, the risks faced by the lessee are normally reduced as compared with those incurred in a situation in which such insurance is lacking, it remains the case that that derives from the very nature of the insurance. That, in itself, does not mean that such insurance must be regarded as being ancillary to the leasing service of which it forms part. Although such insurance supplied to the lessee through the lessor facilitates the enjoyment of the leasing service, in the manner described above, it must be held that constitutes essentially an end in itself for the lessee and not only the means to enjoy that service under the best conditions.

43

The fact that insurance covering the leased item is required by the lessor, as appears to be the case in the transaction at issue in the main proceedings, does not invalidate that finding. In particular, it must be observed that, in the circumstances at issue in the main proceedings, if the lessee is required to ensure that the leased item is insured, he has the option of insuring that with the insurance company of his choice. Thus, the requirement for insurance cover cannot, in itself, mean that a supply of insurance by the lessor, such as that at issue in the main proceedings, is indivisible or ancillary to the supply of the leasing services.

44

Furthermore, it must be recalled that the way of invoicing and pricing may be an indication as to whether supply is a single supply (see, to that effect, CPP, paragraph 31). Thus, separate invoicing and pricing of the services supports the view that the services are independent, without being decisive (see, to that effect, order in Purple Parking and Airparks Services, paragraph 34 and the case-law cited).

45

In that connection, it appears that the methods used in the case in the main proceedings, namely separate pricing and invoicing reflect the interests of the contracting parties. The lessee wishes above all to obtain leasing services and the insurance he is required to take by the lessor is of only secondary importance to him. If the lessee also decides to obtain insurance services through the lessor, such a decision is made independently of his decision to conclude a leasing agreement.

46

Finally, according to the general conditions of the leasing agreements concluded between B.G.?. Leasing and its clients, such as are apparent from the file submitted to the Court, it appears that the lessor has, in certain circumstances, the option to terminate the leasing agreement if the lessee does not pay a fee other than the rent stipulated in the contract.

47

If such a fee, the non-payment of which allows the lessor to terminate the leasing agreement, also covers the insurance premiums for the leased item, it must be observed that, although a contractual stipulation of that kind may constitute an indication of a single service in other circumstances, that is not relevant in the case where the separate transactions cannot be regarded objectively a constituting a single service (see, to that effect, Field Fisher Waterhouse, paragraphs 23 and 25). Therefore, despite the existence of a contractual stipulation, leasing and insurance services such as those at issue in the main proceedings may constitute separate services.

48

Second, it is clear, a fortiori, from the foregoing considerations and the fact mentioned in paragraph 36 of the present judgment, that the insurance and leasing services at issue in the main proceedings cannot be regarded as being so closely linked that, objectively, they form a single indivisible economic supply which it would be artificial to split, for the purpose of the case-law set out in paragraph 30 of this judgment.

49

In order to provide a complete answer to the referring court, it must be observed, for the purpose of interpreting Article 78 of the VAT Directive, that where leasing services and insurance for the leased item constitute independent services, the same taxable amount is not applicable to both of them. Thus, insurance services, which constitute an independent supply and an end in itself for the lessee, cannot constitute incidental expenses with respect to a leasing transaction, within the meaning of Article 78, which must be taken into account in order to calculate the taxable amount for the latter transaction. In such circumstances, insurance costs constitute the consideration for the supply of insurance for the leased item and not the consideration for the leasing service itself.

50

Having regard to the foregoing considerations, the answer to the first question is that the supply of insurance services for a leased item and the supply of the leasing services themselves must, in principal, be regarded as distinct and independents supplies of services for VAT purposes. It is for the referring court to determine whether, having regard to the specific circumstances of the case in the main proceedings, the transactions concerned are so closely linked that they must be regarded as constituting a single supply or whether, to the contrary, they constitute independent services.

The second question

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The second question is referred in the case whether the supply of insurance for the leased item and the supply of leasing services themselves must be regarded as separate. By that question, the referring court asks essentially whether Article 135(1)(a) of the VAT Directive must be interpreted as meaning that a transaction under which the lessor ensures the leased item with a third party and re-invoices the cost of that insurance to the lessee constitutes an insurance transaction exempt with the meaning of that provision.

52

As a preliminary point, it must be recalled that, in the case in the main proceedings, the classification of the insurance service supplied by the lessor for the item leased as an insurance transaction within the meaning of Article 135(1)(a) is not challenged. However, the referring court asks in particular whether a transaction which includes, in addition to the insurance mentioned above, the re-invoicing to the lessee, of the cost of that insurance by the lessor, must also be exempt from VAT.

53

On the basis of the evidence from the file submitted to the Court, it is apparent that the insurance at issue is, in the first place, sold by the insurer to B.G.?. Leasing, which passes on, in second place, the cost to its client, the lessee. However, the Court does not have any information concerning the exact content of the insurance contract or the details of the contract concluded between the lessor and the lessee for the purposes of re-invoicing the cost of the supply of insurance.

54

In order to determine whether that transaction, consisting not only in a supply of insurance, but also in the re-invoicing the cost thereof to the lessee, constitutes a transaction exempt from VAT, it is necessary to determine the scope of Article 135(1)(a) of the VAT Directive.

55

The Court first provided a definition of that expression in CPP, where it held that the essential characteristics of an insurance transaction are that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded.

56

It must be recalled that the terms used to specify the exemptions covered by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that

VAT is to be levied on all services supplied for consideration by a taxable person (Case C-44/11 Deutsche Bank [2012] ECR, paragraph 42 and the case-law cited). Furthermore, according to settled case-law, the exemptions provided for in that article constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (see, to that effect, CPP, paragraph 15, and Case C-240/99 Skandia [2001] ECR I-1951, paragraph 23).

57

The VAT Directive does not define the concept of an insurance transaction.

58

However, it is clear from the case-law of the Court that the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (see, in particular, Case C-8/01 Taksatorringen [2003] ECR I-13711, paragraph 39, and the case-law cited). Furthermore, an insurance transaction necessarily implies the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party (Skandia, paragraph 41, and Taksatorringen, paragraph 41).

59

The Court states that the expression ‘insurance transactions’ is broad enough in principle to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured (see, to that effect, CPP, paragraph 22).

60

Having regard to the foregoing considerations, it is necessary to examine whether ‘insurance transactions’ also covers the grant of insurance cover taken out by an insured party such as the lessor, who re-invoices, in the context of a leasing transaction, the cost of that insurance to its client, that is the lessee, which enjoys that cover against risks with respect to the lessor.

61

In principle, such a question must be answered in the affirmative.

62

It must be observed that a supply of insurance, such as that at issue in the main proceedings, cannot be subject to VAT simply because the insurance costs are re-invoiced in accordance with the contract concluded between the parties to a leasing agreement. The fact that the lessor takes out insurance at the request of its clients with a third party and then passes the exact cost billed by the third party to those clients cannot invalidate that finding. In such circumstances, in so far as the supply of insurance at issue remains unchanged, the amount re-invoiced constitutes the consideration for that insurance and, therefore, there is no need to submit such a transaction to VAT, since it is exempt pursuant to Article 135(1)(a) of the VAT Directive.

63

In so far as concerns the relevance for the circumstances at issue to the principal, in Article 28 of

the VAT Directive, according to which'[w]here a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself', it must be observed, first, that although B.G.?. Leasing concluded the insurance contract at issue in the main proceedings in its own name and on its own behalf it is for the referring court to ascertain, the transaction concerned does not fall within the scope of Article 28 (see, by analogy Case C-520/10 Lebara [2012] ECR, paragraph 43). Second, if the insurance contract had been concluded on behalf of someone else, the case-law of the Court on Article 28 of the VAT Directive is such as to support the exemption of the transaction at issue in the main proceedings.

64

According to that case-law, since Article 28 is in Title IV of the VAT Directive, entitled 'Taxable Transactions', and which is worded in general terms is couched in general terms, without containing restrictions as to its scope or its extent, it also concerns the application of VAT exemptions under the Sixth Directive (see, to that effect, Case C-464/10 Henfling and Others [2011] ECR I-6219, paragraph 36).

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In any event, according to settled case-law, the principle of fiscal neutrality precludes treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes (Joined Cases C-259/10 and C-260/10 The Rank Group [2011] ECR I-10947, paragraph 32 and the case-law cited).

66

Therefore, the supplies of insurance for the leased item, in respect of which the owner remains the lessor, cannot, in circumstances such as those at issue in the main proceedings, be treated differently according to whether such services are supplied directly to the lessee by an insurance company or whether the latter obtains such insurance cover through the lessor which procures it from an insurer and re-invoices its cost to the lessee for the same amount.

67

Moreover, that interpretation is supported by the very purpose of the VAT Directive, which exempts insurance transactions but gives Member States, in Article 401 thereof, the possibility of maintaining or introducing a tax on insurance contracts. Consequently, if 'insurance transactions' refers solely to transactions performed by insurers themselves, the final consumer, such as a lessee in a leasing agreement, in circumstances such as those at issue in the main proceedings, might have to pay not only that tax but also VAT. Such a result would be contrary to the purpose of the exemption provided for by Article 135(1)(a) of the VAT Directive (see, to that effect, CPP, paragraph 23).

68

Finally it must be stated that that reasoning is based on the assumption that the lessor invoices the lessee for the exact amount of the insurance and that that reasoning cannot apply if the amount invoiced to the lessee for insurance costs is more than that invoiced to the lessor by the insurer.

69

It follows that it must be held that, in the context of leasing, a transaction consisting in re-invoicing the exact cost of insurance for the leased item, like that at issue in the main proceedings,

constitutes an insurance transaction within the meaning of Article 135(1)(a) of the VAT Directive.

70

Having regard to the foregoing considerations, the answer to the second question is that where the lessor insures the leased item itself and re-invoices the exact cost of the insurance to the lessee, such a transaction constitutes, in circumstances such as those at issue in the main proceedings, an insurance transaction within the meaning of Article 135(1)(a) of the VAT Directive.

Costs

71

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

1.

The supply of insurance services for a leased item and the supply of the leasing services themselves must, in principal, be regarded as distinct and independents supplies of services for VAT purposes. It if for the referring court to determine whether, having regard to the specific circumstances of the case in the main proceedings, the transactions concerned are so closely linked that they must be regarded as constituting a single supply or whether, to the contrary, they constitute independent services.

2.

Where the lessor insures the leased item itself and re-invoices the exact cost of the insurance to the lessee, such a transaction constitutes, in circumstances such as those at issue in the main proceedings, an insurance transaction within the meaning of Article 135(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[Signatures]

(*1) Language of the case: Polish.